UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

BUDDY EUGENE STRUCKMAN,
Petitioner,

Case No. 1:20-cv-737
Judge Timothy S. Black
Magistrate Judge Michael R. Merz

v.

WARDEN, RICHLAND CORRECTIONAL INSTITUTION,
Respondent.

PETITIONER'S OBJECTIONS TO THE MAGISTRATE JUDGE'S 07/17/2026 #104 REPORT AND RECOMMENDATIONS AND ANCILLARY ORDER PURSUANT TO FED. R. CIV. P. 72(b)

Now comes Petitioner, Buddy Eugene Struckman, proceeding *pro se*, and respectfully submits his formal Objections to the Magistrate Judge's Report and Recommendations ("R&R") issued on July 17, 2026 (ECF No. 104). Pursuant to Federal Rule of Civil Procedure 72(b)(2), Petitioner objects to the Magistrate Judge's recommendation that his Second Amended Petition be dismissed without prejudice as moot.

Petitioner requests that District Judge Timothy S. Black conduct a *de novo* review of the dispositive portions of the R&R. As detailed below, the R&R contains plain errors of law that directly contradict binding Supreme Court and Sixth Circuit precedent regarding federal habeas corpus jurisdiction.

MEMORANDUM IN SUPPORT OF OBJECTIONS

I. Standard of Review

Because a recommendation to dismiss a petition for a writ of habeas corpus is a dispositive matter, this Court must conduct a *de novo* review of those portions of the R&R to which specific objections are made. Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1)(C). A *de novo* review requires this Court to re-examine the legal issues completely from scratch, without giving deference to the Magistrate Judge's conclusions.

OBJECTION NO. I : THE MAGISTRATE JUDGE COMMITTED CLEAR FACTUAL AND LEGAL ERROR BY CLAIMING PETITIONER "NOWHERE CONTRADICTED" THE MOOTNESS ASSERTION, IGNORING RECORD EVIDENCE AT ECF NO. 59-1, PAGEID 4428.

On page 6 of the Report and Recommendations (ECF No. 104), the Magistrate Judge asserts that because Petitioner was released from prison, the case is automatically moot, stating that "Struckman has nowhere contradicted this statement [regarding mootness]." (ECF No. 104, PageID 5457). This finding is factually false and completely contradicted by the existing record in this case.

Petitioner has proactively and explicitly placed the Court on notice that his release did *not* moot this action. In Petitioner's Traverse, filed post-release at **ECF No. 59-1, PageID 4428**, Petitioner explicitly raised the controlling constitutional standard to preserve jurisdiction, stating verbatim:

> *"A federal court may grant habeas relief to this former incarcerated prisoner on this state conviction because this former incarcerated prisoner continues to suffer wrongful conviction collateral legal consequences with the 'impact of actuality'*

citing Benton v. Maryland, 395 U.S. 784 at 790; "Carafas v. LaVallee, 391 U.S. 234 at 237, 238."

By characterizing Petitioner's reference to ECF No. 59-1 as merely "an obvious attempt to avoid the thirty-page limit" (ECF No. 104, PageID 5452), the Magistrate Judge used a procedural technicality to completely ignore and suppress controlling Supreme Court precedent that preserves this Court's Article III jurisdiction.

Under firmly established federal law, while a petitioner must be "in custody" at the time a habeas petition is initially filed, subsequent release from physical confinement does *not* render the case moot if the underlying criminal conviction carries continuing collateral consequences. *Carafas v. LaVallee*, 391 U.S. 234, 237-38 (1968); *Sibron v. New York*, 392 U.S. 40, 55-57 (1968). Furthermore, the United States Supreme Court has made clear that courts must *presume* that a wrongful felony conviction carries severe, lifelong collateral disadvantages. *Spencer v. Kemna*, 523 U.S. 1, 7-8 (1998).

Petitioner continues to suffer concrete, actual injuries and civil disabilities under Ohio law as a direct result of this unconstitutional conviction, including but not limited to:

1. The permanent forfeiture of his constitutional Second Amendment right to possess firearms under Ohio Revised Code § 2923.13;
2. The statutory disqualification from serving as a juror in the State of Ohio;
3. The statutory bar from holding public office or obtaining various state-regulated professional licenses; and
4. The ongoing threat of severe statutory sentence enhancements in any future legal proceedings.

Because Petitioner firmly established the presence of these ongoing collateral consequences at ECF No. 59-1, PageID 4428, the Magistrate Judge's finding that Petitioner "nowhere contradicted" mootness constitutes clear error. This Court maintains proper subject matter jurisdiction under Article III, and the Report and Recommendations must be set aside.

Conclusion to objection number I :

For the foregoing reasons, the Magistrate Judge's finding that Petitioner failed to contradict the mootness assertion is flatly disproved by the record. Petitioner explicitly preserved this Court's Article III jurisdiction at ECF No. 59-1, PageID 4428 by pleading the exact collateral consequences and controlling Supreme Court precedents (*Carafas*, *Spencer*) that defeat a finding of mootness. The Magistrate Judge committed clear factual and legal error by ignoring this record evidence under the guise of a procedural page-limit infraction. Accordingly, Petitioner respectfully requests that this Court Decline to Adopt the Report and Recommendations, find that this action remains a live Article III case or controversy, and remand or retain this matter for a full adjudication on the merits.

Objection No. II : The Magistrate Judge Erred as a Matter of Law by Holding that Petitioner's Release Divests the Court of Subject-Matter Jurisdiction.

The Report and Recommendations ("R&R") errs in concluding that Petitioner's release from physical confinement on October 9, 2024, renders this case moot and deprives the Court of subject-matter jurisdiction (ECF No. 104, PageID 5457).

It is a bedrock principle of federal habeas jurisprudence that the statutory "in custody" requirement of 28 U.S.C. § 2254(a) is determined strictly at the time the petition is filed. *Carafas*

v. LaVallee, 391 U.S. 234, 237–38 (1968); *Maleng v. Cook*, 490 U.S. 488, 490–91 (1989). If a petitioner is in custody when the action is initiated, federal jurisdiction attaches permanently and is not defeated by a subsequent release from prison. Under the Supreme Court's ruling in *Benton v. Maryland*, 395 U.S. 784 (1969), an unconditional release does not moot a habeas petition if the underlying conviction continues to impose concrete collateral consequences or civil disabilities upon the petitioner. Because a felony conviction carries inherent, ongoing legal burdens under Ohio law, a live case or controversy remains. Petitioner explicitly preserved this argument post-release in his Traverse at **ECF No. 59-1, PageID 4428**, noting these precise collateral consequences with the "impact of actuality."

As the verified record reflects, Petitioner was fully incarcerated when he initiated this action on August 25, 2020. Furthermore, Petitioner remained physically incarcerated throughout the litigation of his major procedural milestones. As conclusively proven by the sworn, notarized record entry at ECF No. 33-1, PageID 234, Petitioner was an inmate at Richland Correctional Institution when he signed and submitted his Motion for Leave to Amend and the underlying operative Second Amended Petition. Because federal habeas jurisdiction attaches irreversibly based on a petitioner's custody status at the time these pivotal procedural steps are taken, subsequent release from physical confinement cannot defeat the petition under *Carafas v. LaVallee*, 391 U.S. 234 (1968).

Under long-standing Supreme Court precedent in *Sibron v. New York*, 392 U.S. 40, 55 (1968), a criminal conviction carries a formal presumption that collateral consequences remain even after a sentence is served. The state bears the burden to prove that no such consequences exist. Because the Warden has not shown the conviction is completely wiped clean, the case cannot legally be declared moot.

Specifically, Petitioner's unlawful possession convictions under Ohio law carry severe, lifelong collateral consequences and automatic civil disabilities that prevent this case from becoming moot. These ongoing, concrete injuries include:

1. **Loss of Core Civil Rights**: The permanent forfeiture of Petitioner's constitutional Second Amendment right to own, possess, or use a firearm under Ohio Revised Code § 2923.13 (Weapons Under Disability).
2. **Statutory Disqualifications**: The automatic disqualification from serving as a juror in the State of Ohio, and severe statutory bars from holding public office or obtaining various state-regulated professional licenses.
3. **Financial Penalties**: Ongoing unfulfilled financial obligations, court costs, and lasting property forfeiture specifications tied directly to the original 2018 sentencing record.

Because Petitioner faces permanent civil disabilities, employment disqualifications, and the total deprivation of constitutional rights under state law, a live controversy remains, and this Court retains absolute subject-matter jurisdiction to decide Petitioner's constitutional claims on the merits. The R&R's mootness determination constitutes plain error.

Conclusion to Objection No. II: Because Petitioner firmly established the presence of ongoing civil disabilities at **ECF No. 59-1, PageID 4428**, backed by the conclusive record proof of active incarceration during key milestones at **ECF No. 33-1, PageID 234**, federal habeas jurisdiction attached irreversibly at the time of the initial filing (**ECF No. 4**). The Magistrate Judge's mootness determination (**ECF No. 104, PageID 5457**) therefore constitutes plain legal error. This Court maintains proper subject-matter jurisdiction under Article III, and the Report and Recommendations recommending dismissal must be set aside.

OBJECTION NO. III: THE MAGISTRATE JUDGE ERRED BY REFUSING TO CONSIDER PETITIONER'S FACTUAL CITATIONS CONTAINED IN DOC. 59-1 AND BY ISSUING AN UNAUTHORIZED CONTEMPT WARNING.

Petitioner objects to the R&R's conclusion that his previously filed 121-page Traverse (Doc. 59-1) cannot be considered and that any reference to it constitutes an "attempted breach" of Magistrate Judge Litkovitz's March 23, 2026 Order (Doc. 72). This finding is legally and procedurally erroneous for seven independent reasons.

A. Petitioner Complied with the Literal Commands of the Page-Limit Order

The March 23, 2026 Order granted Petitioner leave to file an amended Traverse "not to exceed 30 pages" and instructed Petitioner to cite exhibits contained in the State Court Record. Petitioner complied fully with the letter of that directive. The operative Traverse (ECF No. 101) is exactly 30 pages long. The Order did not explicitly prohibit a petitioner from cross-referencing analytical frameworks or exhaustive record citations previously compiled on the docket in Doc. 59-1, particularly when those citations track the exact same State Court Record. Referencing an active docket entry for its underlying citations is a standard, routine litigation practice, not an act of bad-faith evasion or a procedural violation.

B. The Filing of Multiple Traverses Was the Direct Result of a Third-Party Vendor Technical Failure and Unreceived Motions to Strike, Not Bad-Faith Evasion

The R&R heavily penalizes Petitioner for filing multiple iterations of his Traverse, framing the behavior as an unexplained procedural infraction that warrants a summary contempt warning (ECF No. 104, PageID 5452). This characterization completely misstates the operational facts.

Petitioner did not purposefully attempt to inundate the Court with duplicate briefings to flout local rules. Rather, upon identifying a signature and formatting defect in the initial transmissions, Petitioner explicitly requested the third-party commercial mailing vendor—**postalform.com**—to place a hold on those specific mailings. In direct violation of Petitioner's explicit instructions, the vendor's automated system refused to execute the hold and processed the duplicate, improperly signed documents anyway, completely outside of Petitioner's physical control.

Furthermore, the R&R's assertion that these duplicate filings were submitted "without any explanation" is factually incorrect (ECF No. 104, PageID 5452). The moment Petitioner realized the vendor had pushed the duplicates through, he immediately drafted and dispatched formal Motions to Strike the non-conforming documents to ensure the electronic docket report remained clean. The fact that the Clerk's Office apparently never received, processed, or logged those corrective Motions to Strike cannot be legally attributed to Petitioner as an "attempted breach" of an order (ECF No. 104, PageID 5452). A *pro se* litigant cannot be threatened with summary contempt of court based entirely on a third-party commercial vendor's processing error and subsequent administrative delivery failures.

C. Petitioner Cross-Referenced Fact Citations, Not Legal Claims

Petitioner did not attempt to smuggle in 121 pages of new or unapproved legal claims. Rather, ECF No. 101 explicitly states the reference is made "solely to the extent it relies on materials already contained within the State Court Record". Because this Court expanded the record under Rule 7 to include complex municipal court dockets, police reports, and public records entries, condensing thousands of pages of structural factual citations into a rigid 30-page ceiling is a physical impossibility for a pro se litigant. Referencing the thorough, previously compiled

factual indexing in Doc. 59-1 was a necessary mechanism to guide the Court through a massive record and safeguard Petitioner's right to a meaningful merits review.

D. Doc. 59-1 Remains an Active Docket Entry That Was Never Struck

A litigant cannot commit an "attempted breach" or face threats of contempt simply for citing an open, active public record entry on the Court's own docket sheet. While Petitioner's motion to file an oversized brief was denied in part, the attached 121-page draft (Doc. 59-1) was never struck, removed, or restricted from citation by any formal order of this Court. It remains a valid docket entry and a part of the case record. The R&R's retroactive creation of a blanket citation ban to shield the record from review is procedurally improper and must be set aside.

E. The R&R's Contempt Warning Exceeds Statutory Magistrate Authority

The R&R states: "Petitioner is forbidden to file any other iterations of the Traverse... attempting to do so will be regarded as a contempt of court." (ECF No. 104, PageID 5452). This summary threat is legally void. Under the Federal Magistrate Act, 28 U.S.C. § 636(e)(6), a Magistrate Judge lacks independent statutory authority to issue final contempt sanctions or summarize non-compliant filing behaviors as automatic contempt. If a litigant's behavior warrants sanctions, the Magistrate Judge's sole lawful recourse is to certify the facts to the District Judge and issue an order to show cause why the individual should not be held in contempt by the district court. The categorical threat of summary contempt in the R&R completely bypasses the mandatory statutory framework of 28 U.S.C. § 636(e) and must be set aside.

F. The R&R Improperly Nullifies 28 U.S.C. § 2248 and Rule 5(e)

Under Rule 5(e) of the Rules Governing § 2254 Cases and 28 U.S.C. § 2248, the factual allegations contained within a petitioner's Traverse must be accepted as true unless the Respondent specifically enters a denial or contests them. As noted in Petitioner's Notice of Default (Doc. 63), the Respondent completely failed to respond to the substantive claims raised within Petitioner's Traverse filings. By completely refusing to look at the thorough factual records cited in Doc. 59-1, the Magistrate Judge effectively shields the Respondent from their own pleading default and acts as an advocate for the State, in direct violation of 28 U.S.C. § 2248.

G. Refusal to Review the Complete Briefing Conflicts with the Order Reinstating the Case

District Judge Black's October 20, 2025 Order (Doc. 48) formally reinstated this case, accepted the Second Amended Petition, and explicitly ordered a full merits response and review. The R&R's total exclusion of the extensive factual briefing in Doc. 59-1 thwarts the District Judge's clear mandate for a comprehensive review of the constitutional violations that led to Petitioner's wrongful conviction.

H. The R&R's 48-Hour Turnaround Violates Due Process by Denying Petitioner Notice and a Meaningful Opportunity to Cure Logistical Discrepancies

A bedrock principle of federal due process is the requirement of notice and a meaningful opportunity to be heard before a party faces terminal sanctions or the summary dismissal of their action. *Link v. Wabash R. Co.*, 370 U.S. 626, 632 (1962). This requirement is applied with heightened leniency when a litigant is proceeding *pro se*. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

The timeline of this Court's docket exposes a severe procedural ambush. Petitioner's operative Traverse (ECF No. 101) was officially entered onto the electronic docket on **July 15, 2026**. Less than forty-eight hours later, on **July 17, 2026**, the Magistrate Judge issued the instant R&R (ECF No. 104), leaping straight to a recommendation for absolute dismissal and leveling severe threats of contempt.

The Magistrate Judge never issued a deficiency order, never requested clarification regarding the technical duplicate transmissions forced by *postalform.com*, and never afforded Petitioner a single day's opportunity to cure any perceived signature or formatting errors. By utilizing a 48-hour judicial turnaround to summarily throw out a multi-year constitutional litigation without providing notice or an opportunity to amend, the R&R violates fundamental procedural due process. A court cannot rush to execute a terminal dismissal based on automated third-party vendor anomalies without first allowing the *pro se* litigant a fair chance to speak or correct the record.

Conclusion to Objection No. III: The Magistrate Judge's refusal to consider the cross-referenced record citations in **Doc. 59-1**, his mischaracterization of Petitioner's filing compliance regarding third-party vendor operations (**postalform.com**), his total failure to provide notice or a meaningful opportunity to cure logistical discrepancies during a rushed 48-hour turnaround, and his legally unauthorized summary contempt warning (**ECF No. 104, PageID 5452**) collectively constitute plain, reversible legal errors that violate procedural due process. The District Judge should completely reject these procedural portions of the R&R. The Court should confirm that **Doc. 59-1** remains a valid part of the open case file, rule that its underlying factual indexing may be properly considered to supplement the record, and proceed to

conduct a thorough *de novo* merits review of all grounds for relief set forth in the operative Traverse (**ECF No. 101**).

Objection No. IV: The Magistrate Judge Erred by Recommending the Denial of a Certificate of Appealability and Certifying that an Appeal Would Be Frivolous.

The Report and Recommendations errs as a matter of law in recommending that Petitioner be denied a Certificate of Appealability ("COA") and certifying to the Sixth Circuit that any appeal would be objectively frivolous (ECF No. 104, PageID 5458).

Under 28 U.S.C. § 2253(c)(2) and *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), when a district court dismisses a petition on procedural grounds without reaching the underlying constitutional claims, a COA must issue if the petitioner demonstrates:

1. That jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right; and
2. That jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Petitioner satisfies both prongs of the *Slack* framework with absolute precision.

A. The Procedural Ruling is Highly Debatable and Directly Conflicts with Binding Circuit Precedent

The Magistrate Judge's procedural conclusion—that an unconditional post-filing release completely strips a federal court of subject-matter jurisdiction—is not merely debatable; it is completely irreconcilable with established federal jurisprudence.

1. **The R&R's Flawed Rule**: The R&R seeks to enforce a categorical, flat rule that *"once that confinement ends, there is no longer a justiciable case or controversy"* (ECF No. 104, PageID 5458).
2. **The Express Binding Conflict**: This conclusion directly flouts the controlling rule of this Circuit. In *Gentry v. Deuth*, 456 F.3d 687, 693–95 (6th Cir. 2006), the Sixth Circuit explicitly addressed habeas petitions following a petitioner's physical release, holding that **"the expiration of a petitioner's sentence does not moot a habeas petition directing a challenge to the underlying conviction."** The Sixth Circuit forcefully emphasized that courts must presume the existence of severe civil disabilities, and because those disabilities persist, **"the case remains a live case or controversy for purposes of Article III."** *Id. at 694*.

The R&R's sweeping assertion that an appeal would be "objectively frivolous" is an abuse of discretion. A position cannot be frivolous when it aligns seamlessly with binding Sixth Circuit case law (*Gentry*) and foundational Supreme Court precedent (*Carafas*). At a bare minimum, because the Magistrate Judge's order creates a direct conflict with the published, governing laws of this jurisdiction, jurists of reason would find the R&R's procedural mootness determination highly debatable.

B. The Underlying Petition States Clear, Debatable Constitutional Claims Grounded in the Active Record

Prong one of *Slack* is easily satisfied because Petitioner's operative Traverse (**ECF No. 101**) establishes that his substantive constitutional claims are robust, heavily documented, and fiercely debated across the expanded record. These claims satisfy the constitutional standard for a COA:

1. **Debatable Brady Suppression and Napue/Giglio Violations**: As codified at **ECF No. 101, PageID 3**, the State's constructive-possession theory is completely shattered by objective records that the prosecution actively withheld from the jury. Specifically, **Attachment A-9 (PageID 4599)** documents the suppression of critical dangerous-ordnance owner information. This is compounded by the fact that the prosecutor knowingly relied on misleading testimony from Officer Jones to manufacture an impression of exclusive dominion, while actively suppressing the municipal-court trial records (**ECF No. 101, PageID 7**).
2. **Debatable Double Jeopardy and Factual Preclusion under Ashe v. Swenson**: As detailed at **ECF No. 101, PageID 4**, the trial court completely ignored a prior municipal-court acquittal and explicit judicial findings documenting that Petitioner did *not* have dominion or control over the unlivable, disheveled residence (**Attachment F, PageID 4643**). Reasonable jurists would debate whether the State's subsequent relocation and relitigation of these identical ultimate facts violated the collateral-estoppel protections of the Double Jeopardy Clause.
3. **Debatable Jackson Insufficient Evidence**: As documented at **ECF No. 101, PageID 3–4**, trial testimony established that the residence lacked utilities, doors were boarded shut because no keys existed, and no items on the second floor bore Petitioner's name. The weapon was locked inside a small safe on the second floor, and Petitioner possessed no key, DNA, or fingerprint connection to it. Jurists of reason would highly debate whether any rational juror could find the elements of knowledge and possession beyond a reasonable doubt under *Jackson v. Virginia*, 443 U.S. 307 (1979).

4. **Structural Sixth Amendment Denial of Counsel**: As detailed at **ECF No. 101, PageID 8**, the record exposes a severe structural defect where the trial court removed Petitioner from the courtroom and conducted *ex parte* communications with counsel to alter defense strategies. The court subsequently forced Petitioner to proceed *pro se* without conducting a valid *Faretta* colloquy or a competency inquiry, leaving him entirely without the "guiding hand of counsel".

Conclusion to Objection No. IV: Because the R&R's procedural mootness framework is completely dismantled by binding Sixth Circuit precedent in *Gentry v. Deuth*, 456 F.3d 687 (6th Cir. 2006), and because the underlying petition raises exhaustive, deeply debatable constitutional questions fully supported by the active record (**ECF No. 101**), a categorical denial of a COA is contrary to law. The District Judge must reject the recommendation in full, decline to certify an appeal as frivolous to the Sixth Circuit, and grant a Certificate of Appealability on the jurisdictional and constitutional questions.

Petitioner further submits the following Supplemental Objections addressing the structural defects in the R&R beyond mootness:

OBJECTION V — AEDPA Failures

The Magistrate Judge committed plain legal error by announcing a "merits review" while failing to apply any of the mandatory AEDPA standards governing federal habeas adjudication under **28 U.S.C. § 2254(d)** and **§ 2254(e)(1)**. The R&R states: "This habeas corpus case…is before the Court for decision on the merits…" **(ECF No. 104, PageID 5452)**

Yet the R&R contains **no discussion whatsoever** of:

- **§ 2254(d)(1)** — unreasonable application of clearly established Supreme Court precedent
- **§ 2254(d)(2)** — unreasonable factual determination
- **§ 2254(e)(1)** — presumption of correctness of state factual findings

A magistrate judge **cannot** issue a merits R&R without applying AEDPA. See **Harrington v. Richter**, 562 U.S. 86, 102–03 (2011). AEDPA is not optional; it is the governing standard for all § 2254 merits adjudication.

By refusing to apply AEDPA, the Magistrate Judge:

- failed to perform the statutory review required under **§ 2254(d)**,
- failed to evaluate any constitutional claim under the controlling federal standard,
- violated **28 U.S.C. § 636(b)(1)(B)** by issuing a "merits" R&R with **no findings or conclusions**, and
- violated **Judge Black's reinstatement order (ECF No. 48)**, which required a full merits review.

Because the R&R contains **no AEDPA analysis whatsoever**, it cannot be adopted.

OBJECTION VI — Record-Review Failures

The Magistrate Judge committed clear error by failing to review the state court record as required under **28 U.S.C. § 2254(d)(2)**, **Habeas Rule 7**, and **Habeas Rule 8**. The R&R references the record only once: "the State Court Record (ECF No. 56)" **(ECF No. 104, PageID 5452)**

After PageID 5452, the R&R contains zero citations to the State Court Record, confirming that no record review occurred.

After this single boilerplate reference, the Magistrate Judge:

- did not cite the record,
- did not analyze the record,
- did not address missing transcript volumes,
- did not address misaligned PageIDs,
- did not address unauthenticated excerpts,
- did not address municipal-court records,
- did not address the expanded Rule 7 record,
- did not resolve factual disputes under § 2254(d)(2).

Petitioner attaches Exhibit A demonstrating that transcript pages from the April 25, 2018 Excerpt of Proceedings (pages 3–106) are missing from the State Court Record (ECF No. 56), confirming that the Magistrate Judge's purported "record review" was impossible and never occurred.

Summarizing Petitioner's litigation history is **not** a record review.

This violates:

- **§ 2254(d)(2)** — factual reasonableness must be evaluated based on the record,
- **Habeas Rule 7** — expanded record must be considered,
- **Habeas Rule 8(a)** — factual disputes must be evaluated,
- **Judge Black's reinstatement order (ECF No. 48)** — requiring full merits review.

Because the Magistrate Judge failed to review the record, the R&R cannot be adopted.

OBJECTION VII — Failure to Address Claims

The Magistrate Judge committed reversible error by failing to address **any** of Petitioner's federal constitutional claims.

The R&R lists Petitioner's grounds for relief (ECF No. 104, PageID 5454–5455), but after listing them, the Magistrate Judge: never returns to them, never analyzes them, never applies AEDPA to them, never addresses exhaustion, never addresses procedural default, never addresses timeliness, never issues findings of fact, never issues conclusions of law.

This violates: **28 U.S.C. § 636(b)(1)(B)** — magistrate judge must issue proposed findings and recommendations, **Fed. R. Civ. P. 72(b)** — must address each claim referred, **Habeas Rule 4 & Rule 5** — must review petition and answer, **Judge Black's reinstatement order (ECF No. 48)** — requiring full merits review. A magistrate judge cannot issue a "merits" R&R that contains **no merits analysis**. This defect alone requires rejection of the R&R.

OBJECTION VIII — Unlawful Contempt Threat

The Magistrate Judge exceeded his statutory authority by issuing a contempt threat in violation of 28 U.S.C. § 636(e). The R&R states: "Attempting to do so will be regarded as a contempt of court." (ECF No. 104, PageID 5452) This statement is legally void. Under § 636(e), a magistrate judge cannot issue contempt sanctions, cannot threaten contempt, and cannot declare conduct "contempt." The statute requires certification of facts to the District Judge and an order to show cause. By bypassing this mandatory procedure, the Magistrate Judge acted outside his lawful

authority. The contempt threat must be stricken, and the R&R cannot be adopted. The R&R states:

"Attempting to do so will be regarded as a contempt of court."

(ECF No. 104, PageID 5452)

This statement is legally void. Under 28 U.S.C. § 636(e), a magistrate judge:

- **cannot issue contempt sanctions**,
- **cannot threaten contempt**,
- **cannot declare a litigant's conduct to be "contempt,"**
- **must certify the relevant facts to the District Judge**, and
- **must issue an order to show cause** before any contempt determination can be made.

The Magistrate Judge bypassed this mandatory statutory procedure entirely. By issuing a summary contempt threat without certifying facts to the District Judge or initiating the required show-cause process, the Magistrate Judge acted outside the scope of his lawful authority under § 636(e).

This constitutes reversible error and a clear abuse of authority. The contempt threat must be **stricken**, and the R&R cannot be adopted.

OBJECTION IX — Due-Process Violations

The Magistrate Judge violated fundamental due process by issuing the R&R **48 hours** after the operative Traverse was docketed, without providing notice or an opportunity to cure.

Timeline: Traverse docketed: **July 15, 2026** (ECF No. 101) R&R issued: **July 17, 2026** (ECF No. 104) During this 48‑hour period, the Magistrate Judge: issued no deficiency order, requested no clarification, provided no opportunity to cure vendor‑caused duplicate filings, provided no opportunity to explain signature issues, provided no opportunity to correct formatting discrepancies, provided no opportunity to address record‑citation concerns.

This violates: **Link v. Wabash R. Co., 370 U.S. 626, 632 (1962)** — notice required before terminal sanctions **Haines v. Kerner, 404 U.S. 519, 520 (1972)** — heightened leniency for pro se litigants **Judge Black's reinstatement order (ECF No. 48)** — requiring full merits review

Consequences of the Magistrate Judge's Rush

By rushing to dismiss the case in 48 hours, the Magistrate Judge **actively shielded the Respondent from their own pleading default** under: **Rule 5(e)** — Traverse factual allegations must be accepted as true unless specifically denied **28 U.S.C. § 2248** — Respondent's failure to deny = admitted facts

The Magistrate Judge's refusal to consider Petitioner's factual citations — combined with the accelerated dismissal — deprived Petitioner of a meaningful opportunity to be heard and violated basic procedural fairness.

The due‑process violations require rejection of the R&R.

CONCLUSION

For all the reasons stated above, Petitioner respectfully submits that the Magistrate Judge's Report and Recommendations (ECF No. 104) contains plain factual and legal errors, violates statutory mandates, and must be Set Aside in full.

Petitioner was unquestioningly "in custody" when this action was initiated via the prison mailbox system in August 2020, entered on the docket September 14, 2020 (ECF No. 1), and federal subject-matter jurisdiction attached permanently at that moment under *Carafas v. LaVallee*, *Maleng v. Cook*, and *Benton v. Maryland*. Petitioner continues to suffer actual, ongoing collateral consequences arising from his felony conviction, which he explicitly brought to this Court's attention post-release in his Traverse at ECF No. 59-1, PageID 4428. As conclusively established by the sworn, notarized record entry at ECF No. 33-1, PageID 234, Petitioner was actively incarcerated when the operative Second Amended Petition milestones were initiated. These ongoing civil disabilities include a permanent firearm disability under Ohio Revised Code § 2923.13, statutory barriers to public employment and professional licensing, disqualification from holding public office, and continuing financial penalties and forfeiture specifications. Under *Sibron v. New York*, these consequences are formally presumed to exist, and the State has completely failed to rebut that presumption (ECF No. 57). The Magistrate Judge's mootness ruling therefore directly contradicts controlling Supreme Court precedent, binding local circuit law under *Gentry v. Deuth*, 456 F.3d 687 (6th Cir. 2006), and Judge Black's prior order (ECF No. 48) which formally adopted the April 2024 R&R (ECF No. 34) to reinstate the case and accept the Second Amended Petition (ECF No. 55).

The Magistrate Judge further committed a structural "bait-and-switch" error by falsely labeling the posture as a "merits review" (ECF No. 104, PageID 5452) while completely failing to execute one. *The R&R contains **zero** citations to the State Court Record, confirming that no*

record review occurred. The R&R contains an absolute abdication of the court's core duties under the Antiterrorism and Effective Death Penalty Act (AEDPA). The Magistrate Judge applied zero governing standards under 28 U.S.C. § 2254(d)(1), § 2254(d)(2), or § 2254(e)(1), completely failed to perform any independent review of the State Court Record (ECF No. 56), and left unaddressed all core constitutional questions—including *Brady* suppression, *Napue/Giglio* violations, *Jackson* evidentiary insufficiency, Double Jeopardy factual preclusion, and structural Sixth Amendment denial of counsel. This absolute failure to address claims or issue required proposed findings of fact and conclusions of law directly violates 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b), Habeas Rules 4 and 5, and Judge Black's explicit reinstatement mandate (ECF No. 48).

Additionally, the procedural mechanics of the R&R violate fundamental due process and statutory boundaries. The accelerated 48-hour turnaround between the docketing of the Traverse (ECF No. 101) and the issuance of the R&R (ECF No. 104) operated as a procedural ambush, denying a pro se litigant any notice of deficiency or opportunity to cure logistical formatting discrepancies caused by third-party vendor systems (*postalform.com*). This rushed timeline improperly shielded the Respondent from its own pleading default under Habeas Rule 5(e) and 28 U.S.C. § 2248. Furthermore, the summary threat that further filings "will be regarded as a contempt of court" (ECF No. 104, PageID 5452) is legally void *ab initio*, as it completely exceeds the independent statutory authority granted to magistrate judges under 28 U.S.C. § 636(e)(6). Doc. 59-1 remains an active, open docket entry that was never struck, and its underlying factual index must be considered to safeguard a meaningful merits review.

Finally, the R&R's recommendation that no Certificate of Appealability issue and that an appeal be certified as frivolous (ECF No. 104, PageID 5458) is an abuse of discretion. Under *Slack v.*

McDaniel, reasonable jurists could easily debate both the flawed procedural ruling on post-release mootness and the substantial constitutional claims presented across the active record (ECF No. 101). A COA is required under 28 U.S.C. § 2253(c).

PRAYER FOR RELIEF

Petitioner respectfully requests that District Judge Timothy S. Black:

1. **Decline to Adopt** the Report and Recommendations (ECF No. 104) in its entirety;
2. **Hold** that this case is not moot and that Article III subject-matter jurisdiction remains fully intact;
3. **Order Stricken** the Magistrate Judge's unauthorized summary contempt warning (ECF No. 104, PageID 5452) as a violation of statutory limits under 28 U.S.C. § 636(e) and procedural due process;
4. **Confirm** that Doc. 59-1 remains a valid part of the record and that its factual citations may be properly considered to supplement the record;
5. **Conduct a full *de novo* merits review** of all underlying factual and constitutional claims presented in the operative Traverse (ECF No. 101) by applying the mandatory standards of 28 U.S.C. § 2254(d) and § 2254(e)(1) to the expanded record; and
6. **Grant** a Certificate of Appealability on all debatable jurisdictional and constitutional issues pursuant to 28 U.S.C. § 2253(c).

Petitioner further requests any additional relief the Court deems just and proper.

Respectfully submitted,

/s/ Buddy Eugene Struckman

Buddy Eugene Struckman

Petitioner, Pro Se

1550 Warvel Road #B

Hamilton, Ohio 45013

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Petitioner's **Rule 72(b)** Objections was served upon counsel for the Respondent, the Ohio Attorney General, Criminal Justice Section, 30 E. Broad Street, 23rd Floor, Columbus, Ohio 43215, via regular U.S. Mail, postage prepaid, on this 18 day of July, 2026.

Respectfully submitted,

Buddy Eugene Struckman

Petitioner, Pro Se

EXHIBIT A

Missing transcript pages referenced in the Rule 7 memorandum are drawn from the April 25, 2018 *Excerpt of Proceedings – For Trial Purposes Only*, which spans pages 3 through 106.